South Carolina
DEPARTMENT OF CONSUMER AFFAIRS
293 Greystone Boulevard Suite 400
P. O. BOX 5757
COLUMBIA, SC 29250-5757

Carri Grube Lybarker
Administrator/
Consumer Advocate

PROTECTING CONSUMERS SINCE
1975





April 1, 2021

***VIA ELECTRONIC FILING***

The Honorable Jocelyn Boyd
Chief Clerk/Executive Director
The Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

RE: Docket 2020-247-A
Workshops Regarding the Public Service Commission's Formal Review of Its Regulations Pursuant to S.C. Code Ann. Section 1-23-120(J)
**Department of Consumer Affairs R. 103-823 Reply Comments**

Dear Ms. Boyd:

Pursuant to the February 19, 2021 Second Amended Notice, the Department of Consumer Affairs (the "Department") submits the following comments in reply to those submitted by other parties in this matter. With regard to rate case applications and the Commission Staff's proposed Minimum Filing Requirements ("MFRs"), the Department previously recommended a company file its direct testimony and supporting documents simultaneously with its application, and recommended the Commission require uniform schedules similar to those in the proposed MFRs. Several utility companies have participated in this docket and most of the companies provided constructive comments related to the application process and their preferred filing requirements. Some comments were also critical of the Department and its recommendations. Please find our replies below.

a. Filing direct testimony with an application

Duke Energy Progress and Duke Energy Carolinas (collectively, "Duke") noted they frequently file testimony at the same time as their rate case applications and did not object to the Department's proposal. The Office of Regulatory Staff ("ORS") also supported this

recommendation in its February 17, 2021 letter, noting it would provide additional time for "audit, examination, discovery, testimony preparation and drafting of a proposed order".

The "SouthWest Water utilities" objected to providing testimony with an application because the utility "can better identify and testify to the salient issues after third parties have intervened and stated their concerns" and therefore any testimony provided earlier would be "more general and less useful to the Commission." The primary purpose of direct testimony should be to support the company's application. While direct testimony may be used to address potential intervenors' arguments, rebuttal testimony provides the companies ample opportunity to respond to any intervenors' testimonies.

b. Filing supporting documents with an application

In its February 17, 2021 comment letter regarding R. 13-800 et seq, ORS stated it "supports the SCDCA's recommendations" including requiring "rate applications to include **final** versions of all supporting schedules and financial documentation". ORS' comments reflect that earlier submittal of this information would allow it more time to review applications and fulfill its statutory duties.

Most of the companies objected to this recommendation because the documents may be confidential or proprietary and would need to be provided with safeguards (presumably non-disclosure agreements). While the Department does not object to signing non-disclosure agreements for information that is truly confidential or proprietary, if a company relies upon proprietary or confidential information to support its rate increase request, the information must be available to all parties so that it can reviewed and critiqued. A company may choose to redact or mark such information to safeguard it; however, the earlier the information is submitted, the earlier the parties can review confidentiality issues and enter non-disclosure agreements, if necessary.

Several utilities noted issues which might prevent them from filing supporting materials at the same time as the application. Others noted the documents are more efficiently obtained through early discovery. Duke noted the documents could be provided within 2 weeks of the application filing. Current Commission procedures require discovery responses to be submitted within 20 days. The companies seemingly view these amounts of time as inconsequential in the ratemaking process. We disagree. Because the overall rate case process must be completed within 6 months and hearings typically begin 1 to 2 months before the final order is due, 2 to 3 weeks is a significant amount of time. As an example, in Dominion Energy South Carolina's ("DESC") recent rate case, the hearing started 144 days after the application was filed. Therefore, in that case, if a party submitted discovery on the day the application was filed, nearly 1/7 of the overall preparation time would have elapsed before DESC's discovery responses were required to be submitted 20 days later. Further, these discovery requests would be very generic. They would be based only on an initial review of the application and not direct testimony, which was not required to be submitted until nearly 3 more weeks after the application was filed.

c. Uniform schedules and Minimum Filing Requirements

On February 26, 2021, the Commission asked the parties in this docket to provide feedback on its proposal to use Florida's and Arkansas' filing requirements as a baseline for developing South Carolina requirements. The Department submitted its preferences as requested on March 5, 2021. In a March 17, 2021 letter regarding water and sewer regulations, the ORS stated it "continues to support the DCA's recommendations relating to rate case applications and minimum filing requirements" because it would help ORS review applications "more thoroughly".

Duke responded to the Commission's request for MFR review and noted it generally supports MFRs, but does not think any required schedules should be uniformly formatted. Duke also provided a detailed spreadsheet reflecting its analysis of the Florida, Arkansas, and North Carolina schedules, while also suggesting the Commission build off existing foundations in South Carolina to develop MFRs. Piedmont Natural Gas Company responded to the Commission's request noting that it "routinely provides robust MFRs" in North Carolina rate cases.

The Department appreciates the companies' thoughtful responses to the Commission's MFR review request and candor regarding their existing practices in other jurisdictions. As noted in our March 26th letter, the Department would not object to allowing companies to include specific information in the format that reflects their individual business practices, so long as the schedules themselves are the same for every company and rate case. The Department also does not particularly favor one state's requirements over another.

Blue Granite filed comments on March 26, 2021 which also echoed Duke's concerns about formatting of the information in each schedule. Blue Granite further suggests the Commission permit a utility to reference its own documents rather than including the information in a particular schedule. While the Department does not believe the specific information in each schedule must be formatted uniformly among utilities, they should be required to submit the information in the applicable schedule.

On March 17, 2021 Blue Granite also submitted its comments on S.C. Code Ann. Regs. 103-500 and 700 *et seq*. Some of those comments are relevant to rate case applications and MFRs. Blue Granite states "many utilities tend to use similar rate case exhibit model structures" which "lends consistency…and familiarity to intervenors and the Commission". While the Department appreciates that many utilities tend to do this, the Department's recommendations were made to ensure all utilities will do so. If all companies submit information on the same schedules, the applications can become familiar to all parties, no matter how often they decide to intervene to represent their particular interests.

DESC has not included any state preferences in its responses to the Commission's February 26th request. Instead, DESC proposes the Commission reject the requirement for additional exhibits in rate cases. It claims doing so would make rate cases more expensive and inefficient. It notes these costs would be borne by customers. To support is position, it references its work with

ORS leading up to its most recent rate case and suggests the Department "has every right to coordinate its discovery needs with ORS both before and after an application is filed." (See FN 2 in DESC's March 5, 2021 letter). While this is debatable due to the "confidential or proprietary" provisions in S.C. Code 58-4-55(A), it ignores the fact that no other party would have this luxury. The Department's recommendations were made to help level the playing field for all intervenors.

To further support its claims of efficiency in the current discovery process, DESC notes that due to its pre-filing preparation with ORS, it was able to provide 24,000 pages of discovery to ORS "within 20 days of the commencement of the case" and this same information "was available to be shared with all parties approximately 20 days after the application was filed." In addition to the unnecessary timing delays created by using discovery to obtain supporting documents, it is not efficient for a party to comb through 24,000 pages of responses to find the information that, in essence, is standard to each rate application. The current proposed MFRs would provide the most relevant information in a readily accessible format. The information would be provided at the time of filing. After reviewing that information and the responses provided to ORS, the parties could then decide if submitting supplemental, tailored discovery questions is necessary.

In its March 26, 2021 letter, DESC also states MFRs "would interfere with the ability of the parties to support collaborative efforts…in the months and weeks leading up to a filing". DESC recommends the Commission instead "encourage the evolution, expansion and development of the collaborative approach" it discusses. The Department intended its recommendations to evolve and expand the current processes; however, at this time, the only "parties" that can collaborate in the "months and weeks" before a filing are the utility and ORS. If DESC would allow the Department, as well as other potential intervenors, to submit information requests related to rate case applications before they are filed, then we would support that approach as well.

DESC's final argument against MFRs is the potential added cost of preparing them. (Lockhart Power and the SouthWest Water utilities made similar arguments.) DESC estimates it cost $466,000 to prepare the application and 260 pages of exhibits in its current rate case. It then extrapolates those costs and compares them to a Duke MFR application in Florida which had 3,012 pages. Based on this exercise, DESC estimates that filing MFRs in South Carolina could cost it an additional $4.5 million. DESC presents limited information to support this estimate, which appears to be based only on the number of pages of documents filed in each case.

The Department certainly does not want to create additional costs for ratepayers. We recognize that in the event MFRs are adopted, there could be some additional costs in the first subsequent rate case due to the implementation of a new process. We suspect those costs might be offset by reductions in both discovery requests and ORS audit responses. However, to better understand potential cost implications, we believe additional information would be required. Using DESC's March 26th example, some questions could include:

- How much did it cost DESC to produce the 24,000 pages of discovery for ORS?
- How much did the Florida application cost Duke to prepare?

- How much discovery was requested in the Duke Florida case (by the PSC or intervenors) compared to the DESC South Carolina case?
- How much did it cost DESC to respond to discovery in South Carolina vs. Duke's costs in Florida?
- How does Dominion Energy prepare its applications in other states where MFRs are used and how much do they cost to prepare? (We believe they are required in North Carolina, Ohio, and Virginia and possibly other states where Dominion operates)
- How does the amount of discovery and related costs in these states compare to South Carolina under current processes?

These are just some of the questions we believe can aid in accurately assessing claims of increased costs.

## Conclusion

Utilities have a tremendous advantage in both time and resources when it comes to preparing for, and defending, a request for a rate increase. The Department hopes its recommendations will help streamline information sharing, ensure intervenors a more level playing field within which to present their cases, and produce more thorough, informed hearings and final orders. We believe the Commission's proposed MFRs are a great starting point and we look forward to further discussing these important issues with the Commission and other interested parties.

Regards,

Roger Hall, Esq.
*Deputy Consumer Advocate*